

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**RANDY E. STONE**

Claimant

VS.

**K-MART CORPORATION**

Respondent,  
Self-Insured

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Docket No. 253,844

**ORDER**

Respondent appealed the June 19, 2001 preliminary hearing Order and the June 29, 2001 Nunc Pro Tunc Order entered by Administrative Law Judge Brad E. Avery.

**ISSUES**

Claimant alleges he strained his left testicle on October 6, 1999, while working for respondent and severely strained his right testicle on December 30, 1999, while working for respondent. After considering the evidence presented for this preliminary hearing matter, the Judge ordered respondent to provide claimant with medical treatment.

Respondent contends Judge Avery erred. Respondent argues that claimant's present need for medical treatment is unrelated to his alleged work-related injury. Respondent argues that claimant is not a credible witness and, therefore, did not prove that he sustained a compensable accidental injury at work. Respondent also argues that any additional medical treatment that claimant may now require is the result of a subsequent non-work-related injury that occurred at a bar on January 28, 2001. Therefore, respondent requests the Board to reverse the Judge's award of preliminary hearing benefits.

Conversely, claimant contends the Judge's preliminary hearing orders should be affirmed.

The only issue before the Board is whether claimant's present need for medical treatment is directly related to his alleged work-related injuries or to a subsequent non-work-related event.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Board finds and concludes:

The June 19, 2001 Order and June 29, 2001 Nunc Pro Tunc Order should be affirmed.

The Board agrees with Judge Avery that claimant sustained personal injury by accident arising out of and in the course of employment with respondent. For preliminary hearing purposes, the Board finds that it is more probably true than not that claimant injured his left testicle on October 6, 1999, while working for respondent and pulling on a heavy pallet loaded with garden chemicals. The Board also finds that it is more probably true than not that claimant injured his right testicle on December 30, 1999, while working for respondent and pulling on another loaded pallet.

The above findings are supported by the uncontradicted expert medical opinion of claimant's personal physician, Dr. George Wright, who began treating claimant for these injuries shortly after they occurred. In an April 3, 2001 letter, the doctor writes, in part:

In my opinion, within a reasonable degree of medical certainty, Randy Stone's medical condition is a result of an injury he sustained while performing work for K-Mart. This is based on his description of his symptoms beginning October 9<sup>th</sup>, 1999 and described during his office visit of October 11<sup>th</sup>. He reported to me he was lifting a heavy pallet and during the course of that felt a pulling sensation in the groin. Since that time he has had severe localized pain to the left groin area. This pain grew worse and has resulted in significant work restrictions.

Claimant began receiving medical treatment from Dr. Wright within days of the October 1999 incident. The December 1999 incident occurred after claimant had returned to work under light duty restrictions. Following a denervation nerve block to the right testicle in March 2000, claimant was referred to Dr. Alan Brewer for additional treatment. When deposed in May 2001, claimant was continuing to see Dr. Brewer and Dr. Wright. From the evidence presented, it appears claimant has experienced continuous symptoms following the October and December 1999 incidents at work and, therefore, the Board concludes claimant's present need for medical treatment is part and parcel of the medical treatment needed for those injuries.

Respondent contends claimant's present need for medical treatment arises from a January 28, 2001 altercation between claimant and his brother during the Super Bowl at a tavern owned by claimant's brother's fiancée. Respondent argues that claimant's physician modified claimant's restrictions shortly after the altercation and, therefore, that fact proves that claimant injured himself in the incident. Claimant, however, testified that

he believed the medical appointment that he attended shortly after the Super Bowl was scheduled before the incident with his brother.

At this juncture of the claim, the Board does not believe that claimant is lying about how his injuries initially occurred or about the incident with his brother. The Judge's preliminary hearing award of medical benefits should be affirmed.

In reviewing this claim, the Board has considered the evidence presented at the preliminary hearing, along with the evidence presented in the discovery depositions taken of claimant and the evidence and exhibits from the depositions of the three investigators who testified for respondent.

As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim.<sup>1</sup>

**WHEREFORE**, the Board affirms the June 19, 2001 preliminary hearing Order and June 29, 2001 Nunc Pro Tunc Order entered by Judge Avery.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 2001.

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BOARD MEMBER

c: Jack L. Heath, Topeka, KS  
Clifford K. Stubbs, Roeland Park, KS  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director

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<sup>1</sup> K.S.A. 44-534a(a)(2).